RECOMMENDATIONS OF THE GOVERNOR'S FOCUS COMMITTEE ON CRIMINAL JUSTICE REFORM

Presented to Governor Kim Reynolds

October 29, 2020

Promoting an Unbiased Criminal Justice System

Executive Summary

Promoting Unbiased Policing

- Require and automate data collection on race/ethnicity from law enforcement stops

- Analyze and study the resulting data, and provide annual reports on the findings

- Adopt a statutory ban on disparate treatment in law enforcement activities and the delivery of police services

Brief Background

On October 15, 2019, at the Iowa Summit on Justice & Disparities, Governor Kim Reynolds announced the formation of the Governor's FOCUS (Fueling Ongoing Collaboration and Uncovering Solutions) Committee on Criminal Justice Reform. In 2020, Governor Reynolds charged the FOCUS Committee with providing recommendations to promote an unbiased criminal justice system. After social justice protests and calls for police reform, Governor Reynolds signed HF 2647, which banned chokeholds, required implicit bias and de-escalation training for police officers, and provided more oversight of officers that commit serious misconduct. Governor Reynolds also charged the FOCUS Committee with developing recommendations on anti-racial profiling legislation before the 2021 legislative session.

The Governor named Lieutenant Governor Adam Gregg as the FOCUS Committee's chair and fourteen other members of the committee:

> Department of Corrections Director Dr. Beth Skinner
> Board of Parole Chair Helen Miller
> Department of Public Safety Commissioner Stephan Bayens
> Iowa Law Enforcement Academy Director Judy Bradshaw
> State Public Defender Jeff Wright
> Department of Correctional Services, 6th Judicial District Director Bruce Vander Sanden
> Iowa-Nebraska NAACP President Betty Andrews
> Commission of Latino Affairs Member Rev. Alfonso Perez
> Right on Crime, National Director of Reentry Initiatives John Koufos
> Office of the AG, Crime Victims Assistance Division Director Janelle Melohn
> Marshall County Attorney Jennifer Miller
> Ankeny Police Chief Darius Potts
> Scott County Sheriff Tim Lane
> Urban Dreams Executive Director Izaah Knox

The FOCUS Committee met several times to hear presentations and discuss the subject of eliminating bias in the criminal justice system. The topics of those meetings were:

> February 26:   Police Training and Relationships with Communities of Color
> June 24:   Anti-Racial Profiling Laws
> July 20:   Anti-Racial Profiling Laws and Pretextual Stops
> August 10:   Traffic Stops and Data Collection
> September 24:   Criminal Justice Advisory Boards

The FOCUS Committee would like to thank the following presenters and contributors for sharing their expertise and insights: Division of Criminal and Juvenile Justice Planning, Iowa Law Enforcement Academy, Inclusive Cultural University, U.S. Department of Justice, Des Moines Police Department, ACLU of Iowa, Dr. Christopher Barnum, Iowa-Nebraska NAACP, Nebraska Commission on Law Enforcement and Criminal Justice, Law Enforcement Equity Task Force, University Heights Police Chief Troy Kelsay, Des Moines City Manager Scott Sanders, Cedar Rapids Police Chief Wayne Jerman, Alan Ostergren, State Appellate Defender's Office, R Street Institute, Governor's Office of Drug Control Policy, Department of Transportation, and Iowa State Patrol.

On October 23, 2020, the FOCUS Committee adopted the following recommendations for promoting an unbiased criminal justice system.

Require and automate data collection on race/ethnicity from law enforcement stops

The Department of Transportation system used by Iowa law enforcement to track information regarding traffic stops (TraCS) has the ability to accept information regarding an individual's race/ethnicity. However, the field is not required to be completed by all law enforcement agencies, and it is currently completed based on the officer's perception of the driver's race. Consequently, current data regarding potential racial disparities in traffic stops is incomplete and potentially inaccurate, and law enforcement officers are placed in the challenging position of guessing a person's race/ethnicity or risking an escalation of the interaction by asking the driver's race/ethnicity.

To ensure more complete data, law enforcement agencies shall collect and report the race/ethnicity of every individual whose identification is requested by officers. The data collected at a stop should also include, at minimum: the nature of the alleged law violation that resulted in the stop and whether a warning or citation was issued, an arrest made, or a search conducted as a result of the stop. The information may be collected through an automated method, such as TraCS, observation of the officer, asking the individual stopped, or any other appropriate means.

To ease the collection of this data and improve accuracy, the state should embed an individual's voluntarily-provided, self-identified race/ethnicity in the driver's license/state identification card data. Embedding this information in the DOT data would allow TraCS to automatically populate this information when a license or ID card is scanned. This automated process will allow for better data collection and analysis while easing any burdens on law enforcement.

Because collection of this information would take place at license renewals, which may occur as infrequently as every eight years, the Iowa Department of Transportation should work with relevant stakeholders to identify other methods to accelerate collection of this demographic information, including alternatives such as the annual vehicle registration process. The legislature should take significant precautions to ensure appropriate confidentiality of the driver's license data.

Analyze and study the resulting data, and provide annual reports on the findings

The existing Justice Advisory Board should be responsible for the review and analysis of law enforcement stop data, and should be reformed as follows:

The board should be renamed the "Justice and Community Policing Advisory Board."

Members should be added to better reflect relevant stakeholders and community members, including:

- NAACP representative
- Public member between the age of 16 and 24
- Iowa Coalition for Collective Change representative
- Iowa Law Enforcement Academy director, or designee
- Commission of Latino Affairs member
- Commission of Asian and Pacific Islander Affairs member
- Commission of Native American Affairs member

The board should create a Community Policing Committee from among its members.

The board should be assigned the following duties:

- Advising on rules for the collection, compilation, and reporting of stop data to ensure the use of uniform reporting practices;
- Annually assessing the collection, compilation, and reporting of stop data compiled by law enforcement agencies;
- Issuing a report based on the stop data and the analysis of the data by the Division of Criminal and Juvenile Justice Planning in the Iowa Department of Human Rights. The board's annual report should review and analyze profiling across geographic areas of the state, analyze the past and current status of profiling across the state, consult available evidence based research on intentional and implicit biases, and the impact on law enforcement stop, search, and seizure tactics, and make policy recommendations for eliminating profiling in Iowa.

The board should share the report with ILEA, so ILEA can assess law enforcement training and determine if the requirements are effective for reducing disparate treatment of people of color.

The state should provide matching grant funding to law enforcement agencies to conduct independent, agency-specific research on racial disparities in traffic stops to provide additional data and analysis for consideration by state and local policymakers. Any final reports should be made publicly available and provided to the Justice and Community Policing Advisory Board.

Adopt a statutory ban on disparate treatment in law enforcement activities and the delivery of police services

Racially discriminatory pretextual stops, as defined by the U.S. Supreme Court and the Iowa Supreme Court, are unconstitutional and prohibited. Racial profiling is statutorily banned in 16 states, including Nebraska, which has banned racial profiling since 2001. The USDOJ banned federal law enforcement from engaging in racial profiling in 2003. Race and other individual demographics simply shall not be a factor in police action outside of situations involving a description of a specific suspect, and Iowa law should reflect that principle.

The state shall adopt a ban on disparate treatment based on a person's individual demographics, including race, creed, color, national origin, ethnicity, religion, sex, gender identity/ expression, sexual orientation, physical or mental disability, or any other identifiable characteristics. State or local public safety employees performing law enforcement activities or delivering police services shall be prohibited from engaging in disparate treatment.

Disparate treatment includes any differential treatment of a person on the basis of individual demographics. Detaining an individual, conducting a stop, or any interactions thereafter shall not be based upon the disparate treatment of the individual.

A violation of these prohibited acts is the basis for an administrative personnel action against a public safety employee and any civil remedies under state or federal law.